

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Resident Real Estate  
Salesperson License of James M. Boo,  
License #536079

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION**

The above-entitled matter came before Administrative Law Judge Jerome Arnold (ALJ) for a hearing on October 16, 2013. The record closed on November 15, 2013.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Gregory M. Miller, Siegel Brill PA, appeared on behalf of James M. Boo (Licensee).

**STATEMENT OF THE ISSUES**

1. Did Licensee engage in acts which demonstrate that he is untrustworthy, financially irresponsible or otherwise incompetent or unqualified to act as a resident real estate salesperson under the authority or license granted by the Commissioner?
2. Should Licensee be subject to disciplinary action by the Commissioner?

**SUMMARY OF CONCLUSION**

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

The Administrative Law Judge concludes that Licensee should not be subjected to disciplinary action by the Commissioner as the Commissioner has failed to show by a preponderance of the evidence that Licensee is untrustworthy, financially irresponsible or otherwise incompetent to act under the authority or license granted by the Commissioner.

**FINDINGS OF FACT**

1. Licensee is a resident real estate salesperson licensed by the State of Minnesota with an original issue date of June 27, 1982. He is presently age 59 (DOB 11/12/1954).<sup>1</sup>

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<sup>1</sup> Testimony of James Boo; Ex. 1.

2. Following his initial license, Licensee worked selling real estate with Barnett Realty, then ERA and finally with Edina Realty before becoming an owner of High Point Realty. He presently works for Team Boo Real Estate LCC of High Point Realty owned by his ex-spouse, Tracy Schifsky Boo.<sup>2</sup>

3. The essence of the Department's position that Licensee has engaged in acts which demonstrate that he is untrustworthy, financially irresponsible or otherwise incompetent or unqualified to act as a resident real estate salesperson under the authority or license granted by the Commissioner relates to Licensee's housing and land development ventures and subsequent litigation involving those ventures.<sup>3</sup> The ventures and litigation are summarized as follows:

- (a) *Park Ave. of White Bear Lake, LLC et al. v. James M. Boo*, 4<sup>th</sup> Jud. Dist., Court File No. 27-CV-03-9311 (2003). This litigation which forms the basis of Section 4 of the Statement of Charges and the Department's Count II violation relates to an investment to manufacture and sell modular homes. The venture was a disaster and litigation was initiated against various entities including Licensee. At hearing, Licensee provided a stipulation and order dismissing him from the lawsuit and the Department has dismissed the allegations and violations set forth in Section 4 of the Statement of Charges and its Count II violation.<sup>4</sup>
- (b) *Lake Area Bank v. James M. Boo and the Boo Family Limited Partnership*, 2<sup>nd</sup> Jud. Dist., Court File No. 62-CV-074433 (2009). This litigation also involved the modular home venture and was brought by the bank against the investors, including Licensee, on their guaranty notes on initial and subsequent loan financing agreements. Eventually a settlement was reached where Licensee was to make payments on the amount outstanding and failing timely payment, entry of judgment in the amount of \$1,026,314.00 would occur. Licensee failed to make timely payments and entry of judgment was entered. The judgment remains unsatisfied. The facts and circumstances surrounding the loans and subsequent litigation form the basis of the Department's Section 7 charges and its Count V violation.<sup>5</sup>
- (c) *Alliance Bank v. James M. Boo*, 2<sup>nd</sup> Jud. Dist., Court File No. 62-CV-11-760 (2011). The venture, which commenced in November 2004, was a development by Licensee and others in a venture known as Otsego Development which was financed by Alliance Bank. It was a land development in Otsego, Minnesota, for 70 single family and 43 bay homes. It appears that six different builders were each to build on ten single family lots at the time the loan was made. The housing market

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<sup>2</sup> Test. of J. Boo; Ex. 25.

<sup>3</sup> Ex. 2.

<sup>4</sup> Department closing argument; Ex. 6; Ex. 54.

<sup>5</sup> Test. of Tim Knautz, Senior Investigator, Department of Commerce; Ex. 14-16.

prevented the builders from undertaking building and the development failed with the bank foreclosing on the property. The bank then secured judgments against the investors on their guaranty notes obtaining judgments against each of them. Licensee's judgment became final on September 8, 2011 for \$1,466,479.32 and it remains unsatisfied. The venture and subsequent litigation forms the basis of the Department's Section 4 Charges and its Count III violation.<sup>6</sup>

- (d) *Citizen's Bank f/k/a F&M Bank – Wisconsin v. Land Holding Group, Inc. and James M. Boo*, 10<sup>th</sup> Jud. Dist., Court File No. 82-CV-09-8116 (2009). This litigation relates to a March 2008 promissory note delivered by Licensee on behalf of Land Holding Group, of which he was an investor, to renew a prior loan upon which Licensee provided a personal guaranty. Upon default of monthly payments a judgment was entered against Licensee in the amount of \$53,901.02. The judgment was apparently satisfied by a title insurance company which is seeking recoupment from Licensee for payments it made. The facts and circumstances of the default and litigation form the basis of the Department's Section 6 charges and its Count IV violation.<sup>7</sup>
- (e) *Bremer Bank National Association v. James M. Boo, et al.*, 10<sup>th</sup> Jud. Dist., Court File No. 82-CV-117081 (2011). This litigation involves an October 2008 settlement agreement between Licensee and Bremer Bank on Licensee's \$250,000.00 credit line account, upon which he had earlier defaulted in making payments. The agreement required payments and upon failure of timely payments, entry of judgment would be entered. Entry of judgment occurred and the judgment of \$270,098.79 appears to be unsatisfied. The facts and circumstances of the default and litigation form the basis of the Department's Section 8 charges and its Count VI violation.<sup>8</sup>
- (f) *Cronin v. James M. Boo, et al.*, 10<sup>th</sup> Jud. Dist., Court File No. 82-CV-07-3968, (2008). In the late 1990's Licensee, along with John Cronin, was part of a real estate venture in Wisconsin. Subsequent events led to a settlement of litigation wherein Licensee agreed to make payment to John Cronin in the sum of \$30,000.00, and failing to make timely payments a confession of judgment would be entered. Licensee failed to make payments as required and on April 29, 2009, judgment in the sum of \$24,500.00 was entered. During 2010 and continuing into 2011, attorneys for judgment creditor John Cronin had a number of Writs of Execution served with no property of the Licensee found. Attorneys for judgment creditor Cronin filed a complaint with the Department on August 8, 2011, which resulted in the investigation and subsequent charges and violations

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<sup>6</sup> Test. of T. Knautz; Exs. 7 and 8.

<sup>7</sup> Test. of T. Knautz; Exs. 10-13 and 31.

<sup>8</sup> Test. of T. Knautz; Exs. 17-19.

at issue herein. Licensee satisfied the Cronin judgment on September 18, 2012. The facts and circumstances of the agreements and litigation form the basis for the Department's Section 2 charges and its Count VI violation.<sup>9</sup>

4. With the downturn of the economy, the housing bubble burst of 2007, judgments being entered as set forth herein, and a pending dissolution of marriage between the Licensee and his spouse (10<sup>th</sup> Jud. Dist., Court File No. 82-F9-03-3266), the Licensee and his spouse sold their home and assets were divided. The Licensee's spouse purchased a new home and took ownership of High Point Realty under which she operates as Team Boo Real Estate LLC.<sup>10</sup>

5. Credit worthiness of a resident real estate salesperson is not in and by itself a determining factor for the Department in renewing licenses such as that held by Licensee. A search of 2,000 metro area resident real estate salesperson licenses shows that more than one-third of license holders have judgments against them, or have gone through bankruptcy, and in some cases, both judgments and bankruptcy, without it apparently impacting the renewability of their licenses.<sup>11</sup>

6. Licensee has not declared bankruptcy.<sup>12</sup>

7. Licensee maintains conversations with his creditors and is attempting to resolve his financial obligations.<sup>13</sup>

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.024, 45.027 and 82.82.

2. Licensee received due, proper and timely notice of the charges against him and of the time of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Notice of Hearing was proper and the Department has fulfilled all procedural requirements for presenting this matter for a decision.

4. The Commissioner may subject resident real estate salesperson licensees to disciplinary action if the Commissioner shows by a preponderance of the evidence that the Licensee has engaged in acts which demonstrates that the Licensee is

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<sup>9</sup> Test. of T. Knautz; Exs. 3 and 4.

<sup>10</sup> Test. of J. Boo; Exs. 13 and 25.

<sup>11</sup> Ex. 53.

<sup>12</sup> Test. of J. Boo.

<sup>13</sup> Test. of J. Boo.

untrustworthy or otherwise incompetent to act under the license granted by the Commissioner.<sup>14</sup>

5. A preponderance of the evidence fails to demonstrate that Licensee is untrustworthy, financially irresponsible or otherwise incompetent or unqualified to act as a resident real estate salesperson under the authority or license granted by the Commissioner.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Commissioner of the Department of Commerce not impose any discipline against Licensee James Boo.

Dated: December 18, 2013

s/Jerome G. Arnold  
JEROME G. ARNOLD  
Administrative Law Judge

Reported: Digitally Recorded  
No transcript prepared

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<sup>14</sup> Minn. R. 1400.7300, subp. 5

## **NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Commerce (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner, Department of Commerce, Attn: Melissa Knoepfler Suite 500, 85 Seventh Place East, St. Paul, MN 55101, (651) 296-2715, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **MEMORANDUM**

The Department herein seeks recommendation as to whether Licensee should be subject to disciplinary action by the Commissioner for acts or practices in violation of Minn. Stat. § 45.027, subd. 7(a)(4) (2012). Subsection (4) allows the Commissioner to impose disciplinary action against a real estate licensed salesperson where:

The person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.

The essence of the Department's case is that the Licensee has a large amount of debt reduced to judgments as a result of investment failures in home building and real estate development ventures. The initiating event of subsequent creditor judgments was the failure of the 2004 modular home building venture which was followed by the 2007 housing market crash. In each of the housing and real estate development ventures, the affected banks did their own due diligence and within their practices deemed the ventures to be viable. Guaranty notes were required of the investors by the

banks in each of the ventures. Upon failure of the collateral, the banks sought and obtained judgments on the guaranties of the various investors.

What constitutes untrustworthiness, incompetence and financial irresponsibility to act under a real estate salesperson license is not defined in the statute or in regulations. In the context of a violation of Minn. Stat. § 45.027, subd. 7a(4), the conduct must relate to the licensee's ability, capacity and suitability to be a licensed real estate salesperson.

It is obvious from Licensee's exhibit 53 that judgments and/or bankruptcy are not by themselves sufficient to deem a resident real estate salesperson licensee unable to act under the license as a recent search of 2,000 resident real estate salespersons revealed that more than one-third of those license holders had judgment creditors and/or bankruptcies.

In analyzing whether Licensee, in view of his outstanding debt obligations, has the necessary qualifications to continue to be a licensed real estate salesperson, it is helpful to view the context of what caused them and what is being done to resolve them. It is clear from the evidence that the 2004 modular housing venture followed by foreclosures and actions by the banks against the investor's guaranty notes initiated a cascade of events bringing about more foreclosures and actions by banks against the investor's guaranty notes resulting in the eventual entry of judgments. The litigations against Licensee were settled with a payment schedule together with a confession of judgment to be entered upon failure of timely payments. It is a procedure commonly used to resolve creditor/debtor litigation.

Since the entry of the judgments, the Licensee has resisted the filing of bankruptcy which is available as a means of allowing a fresh start, and instead, he has attempted to work out arrangements with his creditors by satisfying some of the judgments and engaging in conversations with affected banks to work out an arrangement to settle outstanding obligations.

Under the circumstances and evidence herein, the Administrative Law Judge finds that the accumulation of unpaid judgments and Licensee's conduct including that involving the litigation components does not impact Licensee's honesty, ability or competence to act as a real estate salesperson.

**J. G. A.**